tion Act concerned, once the period "runs it shall continue to run notwithstanding any subsequent disability or inability". Indian Limitation Act IX, Sec. 9. Alien enemies are not exempt from this section of the Act, and, unless there is an express provision in the Act in favor of persons under disability, it runs against them as against all others. See *Kendal* v. *United States* (1882) 107 U. S. 123, 125; *Vance* v. *Vance* (1882) 108 U. S. 514, 521; *M'Iver* v. *Ragan* (1817) 15 U. S. 25, 29, so that, on this construction the instant case merits support. Some courts, however, have taken the view that a peaceful resident alien enemy is not under a disability and may sue, *The Oropa* (D. C. 1919) 255 Fed. 132; *Arndt-Ober* v. *Metropolitan Opera Co.* (N. Y. 1918) 182 App. Div. 513; Hall, International Law (6th ed.) 388; despite the fact that to allow a state's enemies to recover against its nationals is recognized to be bad policy. See *Robinson* v. *International Ins. Co. of Mannheim* (1915) 1 K. B. 155. In jurisdictions taking this view, there is no reason for suspending the operation of the statute. But, the policy behind these cases would favor an interpretation of limitation acts to prevent their operation against alien enemies during the period of disability, if such exists. In this way, the government may protect its interest and at the same time preserve the alien enemies' rights. *Wall* v. *Robson, supra,* 503; *Hanger* v. *Abbott, supra.* Under the interpretation, however, given to the statute in the instant case, the result reached followed as a matter of course.

NEGLIGENCE—DEGREES OF CARE—RAILROADS.—The plaintiff was injured while a passenger on the defendant's street car. The lower court charged the jury that if the defendant was a common carrier, it was held to the highest degree of care and diligence consistent with the mode of conveyance employed. On exception to this charge, *held,* it was prejudicial. *Union Traction Co. of Ind.* v. *Berry* (Ind. 1919) 121 N. E. 655.

The early view that Roman law recognized three degrees of care, Smith, Negligence (2nd ed.) 11, has been generally disproved, so that it is now accepted that there were but two standards. Sherman, Roman Law in the Modern World, 297. These were ordinary care, depending upon what a reasonably prudent man would exercise under the circumstances, and extraordinary care. Windscheid Pandekten § 265, n. 8. Most common law jurisdictions, however, have followed the earlier and erroneous interpretation of the Roman law, and have adopted three standards of care, slight, ordinary and extraordinary. *Astin* v. *Chicago etc. R. R.* (1910) 143 Wis. 477, 128 N. W. 265; see *New York Cent. R. R.* v. *Lockwood* (1873) 84 U. S. 357. In accordance with this doctrine, many courts have held a common carrier of passengers liable to use the utmost care in the operation of the road. *Illinois Cent. R. R.* v. Kuhn (1901) 107 Tenn. 106, 64 S. W. 202, and the cases there cited. That the rule is not based on any contractual obligation of a carrier to use the highest degree of care is apparent from the fact that, except by statute, *John* v. *Northern Pac. R. R.* (1910) 44 Mont. 18, 111 Pac. 633, a railroad is under the same obligation to use care toward a gratuitous as toward a passenger for hire. See *Indianapolis Traction Co.* v. *Klentschy* (1906) 167 Ind. 598, 79 N. E. 908; *cf. Murphy's Hotel* v. *Cuddy's Adm'r.* (Va. 1919) 97 S. E. 794. It is submitted that a classification of care into degrees is nothing more than an artificial and cumbersome way of expressing the rule that the precautions

required to avoid negligence depend in each case on what precautions an ordinary prudent man would take under the circumstances. *Tudor* v. *Bowen* (1910) 152 N. C. 441, 67 S. E. 1015; *O'Brien* v. *New York* (App. Div. 1919) 174 N. Y. Supp. 116. Instead of aiding a jury to determine whether the conduct complained of was negligent, such a classification obscures this simple and workable rule, and gives the juror the false impression that certain undertakings require the exercise of a peculiarly high degree of care because of the nature of those enterprises and not of the danger involved. See *Magrane* v. *St. Louis etc. Ry.* (1904) 183 Mo. 119, 81 S. W. 1158; *Steamboat New World* v. *King, supra;* but see *Denver Electric Co.* v. *Simpson* (1895) 21 Colo. 371, 41 Pac. 499. The modern tendency, as illustrated by the instant case, is to regard as prejudicial any charge based on a classification of care into degrees and to adopt as the sole test of care what a reasonably prudent man would exercise under the circumstances. *O'Brien* v. *New York, supra;* see *Magrane* v. *St. Louis etc. Ry., supra; Pomroy* v. *Bangor & Aroostook R. R.* (1907) 102 Me. 497, 67 Atl. 561; *Denver & Rio Grande R. R.* v. *Peterson* (1902) 30 Colo. 77, 69 Pac. 578.

PRINCIPAL AND AGENT—BROKERS—"EXCLUSIVE SALE OF"—SALE BY OWNER.—The owner of real estate entered into a written agreement whereby he "gave to" a broker the "exclusive sale of" his farm upon specified terms, for a definite period. Before the expiration of that period, the owner, without knowledge of the broker's activities, sold the land at a price lower than that specified, to a party upon whom the broker had incurred expense in trying to interest in the purchase. The broker sued for commissions. *Held,* he could not recover since the giving of the right of "exclusive sale" meant the "right of exclusive agency" and did not deprive the owner of his right of disposal. *Roberts* v. *Harrington* (Wis. 1918) 169 N. W. 603.

Where an agency is created for the sale of land, the owner retains the right to dispose of it himself, unless clearly deprived thereof by the contract. *McPike* v. *Silver* (1914) 168 Iowa 149, 150 N. W. 52; *cf. Blumenthal* v. *Bridges* (1909) 91 Ark. 212, 120 S. W. 974. An "exclusive agency to sell" is construed to mean that no other agent will be employed, and not that the principal is deprived of the right of sale. *Dole* v. *Sherwood* (1890) 41 Minn. 535, 43 N. W. 569; see *Aluminum Products Co.* v. *Anderson* (1917) 138 Minn. 142, 164 N. W. 663. The courts construe "exclusive right to sell", however, to bar the owner's right of disposal where it is clear that the owner had made a promise to that effect, *Stringfellow* v. *Powers* (1893) 4 Tex. Civ. App. 199, 23 S. W. 313; see *Ingold* v. *Symonds* (1904) 125 Iowa 82, 85, 99 N. W. 713; but *cf. McPike* v. *Silver, supra,* and where the agent had paid a money consideration. *Fairchild* v. *Rogers* (1884) 32 Minn. 269, 20 N. W. 191. There was no money consideration paid by the agent in return for the promise of "exclusive sale" in the principal case and it is not clear that the stipulation was meant as a promise. If, as seems probable, an offer looking to a unilateral contract was meant, nothing was paid for keeping the offer open, and it could therefore be revoked at any time before acceptance. *Stensgaard* v. *Smith* (1890) 43 Minn. 11, 44 N. W. 669. It is thought that the court, reluctant to hold, as in some jurisdictions, that partial performance constituted acceptance, *Lapham* v. *Flint* (1902) 86 Minn. 376, 90 N. W. 780; *Goward* v. *Waters* (1868) 98 Mass. 596; and consequently being in doubt as to the